Supreme Court, U.S.
FILED
OCT 21 1988
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 88-534

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JIM SHOULDERS; HAROLD HAMMONS; BEVERLY JACKSON; TROY BEAN; JEROME CASSELL; STEVE COURTNEY; WAYNE TRAVIS; AND BUD WALTMON

APPELLANTS

VS.

McCRACKEN COUNTY, KENTUCKY; JOHN HARRIS; FRED AUSTIN; WAYNE LINDSEY; AND DANNY ORAZINE

APPELLEES

ON APPEAL FROM THE SUPREME COURT OF KENTUCKY

MOTION TO DISMISS

Counsel of record for appellees:

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25 pp

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MOTION TO DISMISS

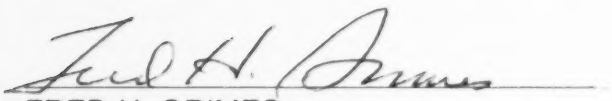
Pursuant to Rule 16, Subsections (b) and (d), Rules of the U.S. Supreme Court, the Appellees move for a dismissal of the appeal of this cause from the Kentucky Supreme Court on the grounds that it does not present a substantial federal question; that the issue raised on the appeal that a state statute authorizing a county fiscal court to enact an occupational tax upon all workers and firms within the County but providing for a credit to workers within the county who pay a like tax to a city within the county is discriminatory and oppressive against county workers and firms required to pay the tax, is upon examination of many prior decisions of this Court not a substantial Federal Question that would require plenary consideration by this Court; that a cursory examination of the statute and ordinance in question makes it evident that it falls within the long-standing policy of this Court to extend broad discretion to legislative bodies in the formulation of tax policies when there is no evidence of arbitrary, hostile or oppressive discrimination; that an equalization of the tax burden on workers within the County is clearly the stated intent and policy of the Kentucky General Assembly.

Appellees-Movants file herein their memorandum of authorities which enunciates the long-standing position of the Court that the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation and that classification is a permissible device for adapting tax programs to local needs and usages when the purpose is intended to achieve an equitable distribution of the tax burden.

That the argument advanced by the Appellants that proceeds of the McCracken County Occupational tax would be used to implement projects, ie. construction of a new county jail, would be beneficial to workers in the City of Paducah who are entitled to the "tax credit", is of no consequence since this Court has long held the position that being a recipient of benefits

from the tax levies does not require equal participation in the payment of taxes which fund such benefits.

Respectfully submitted,



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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

(1) Amendment XIV, § 1, United States Constitution

All persons born or naturalized in the United States and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunitites of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) Kentucky Revised Statute § 68.197(1986)

See Exhibit I in Appendix at pages i to ii.

(3) McCracken County, Kentucky, Occupational Tax Ordinance No. 86.

See Exhibit II in Appendix at pages iii to xiii.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The Fiscal Court of McCracken County enacted an occupational tax and business license ordinance on October 23, 1986. The tax levied was one percent (1%) of the gross wages of employed persons and one percent (1%) of the net profits of self-employed persons and firms. The ordinance, which became effective on January 1, 1987, was enacted pursuant to enabling legislation passed by the Kentucky General Assembly at its 1986 Session (Kentucky Revised Statute 68.197).

The ordinance enacted by McCracken County Fiscal Court, consistent with the provisions of the enabling statute, imposed the tax/license fee on all persons or firms employed or engaging in business in McCracken County but provided for a tax credit to the extent of any similar tax paid to a city within the County.

The City of Paducah, a municipality within the boundaries of McCracken County, already had an occupational tax/license in effect which exacted one and one half percent (1½%) of the gross earnings of the employed within the city limits and a license fee imposed on the self-employed persons and firms which was based upon a classification of businesses and occupations determined by the gross receipts of such persons and firms.

Appellants herein challenged the McCracken County occupational tax/license on the basis that it violated various provisions of the Kentucky Constitution principally on the uniformity of taxation section of the State Constitution, as well as claiming the statute and ordinance was violative of the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

Their suit filed in the McCracken Circuit Court was dismissed on a Motion for Summary Judgment filed by the Appellees herein.

Appellants herein appealed to the Kentucky Court of Appeals. The case was removed to the Kentucky Supreme Court on motion of Appellees and the Court subsequently ruled that the McCracken County occupational tax/license ordinance and its enabling statute (Ky. Rev. Stat. 68.197) neither violated the Kentucky nor U.S. Constitution. The Kentucky Supreme Court upheld the statute and ordinance by a 6-1 vote.

Appellants then filed their Notice of Appeal to this Honorable Court as well as their Jurisdictional Statement.

Appellants predicate their appeal to this Court solely on the grounds that the tax credit granted workers in McCracken County for payment of a like tax to the City of Paducah unfairly discriminates against the workers in McCracken County, outside of the City of Paducah, on the theory that the workers in Paducah are not sharing an equal tax burden with county workers.

This Court has long and consistently stated its position that the judiciary should not sit as a super legislature to judge the widom or desirability of legislative policy determinations made in areas that do not affect fundamental rights, particularly in local economic spheres. As Justice O'Connor stated in her dissenting opinion in Metropolitan Life Insurance Co. v. Ward, 470 U.S. 869, 84 L. Ed. 2d 751, 105 S. Ct. 1676 (1985),

> ". . . it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment."

See also New Orleans v. Dukes, 427 U.S., at 303-304, 49 L Ed. 2d 511-17, 96 S. Ct. 2513 (1976).

This Court, in 1940, stated its well established position which it had maintained for over 50 years, that

> "the broad discretion as to classification possessed by a legislature in the field of taxation

> has long been recognized. This Court fifty years ago concluded that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden . . . .
>
> Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes."

Madden v. Kentucky, 309 U.S. 83, 84 L. Ed. 590, 60 S. Ct. 406, 125 ALR 1383 (1940).

Appellants have labored mightily to paint a picture of a hostile legislature which has oppressively discriminated against the people employed in McCracken County outside the City of Paducah; they refuse to accept the fact that the Kentucky General Assembly, by enacting Ky. Rev. Stat. 68.197, was merely exercising the sound discretion vested in it for the purpose of equalizing the tax burden among the employed throughout McCracken County, and other counties of Kentucky.

This Court had previously stated in Carmichael v Southern Coal & Coke Co., 301 U.S. 494, 81 L. Ed. 1245, 57 S.Ct. 868 (1937), that imposition of a tax on employers to pay into a state Unemployment Compensation Fund was not violative of the Fourteenth Amendment.

In the case of Kahn v. Shevin, 416 U.S. 351, 40 L. Ed. 2d 189, 94 S. Ct. 1734 (1974), this Court upheld a Florida statute which granted an annual $500.00 property tax exemption to widows, residents of Florida, but not to widowers. In this case the Court stated,

> "A state tax law is not arbitrary although it discriminates in favor of a certain class if the discrimination is founded upon a reasonable distinction, or difference in state policy, not in conflict with the Federal Constitution."

In the case at bar, a credit, not an exemption, is granted by the McCracken County Occupational tax ordinance to workers in the City of Paducah who are paying a similar tax, which is an even greater tax than county workers are paying. Without the credit, urban workers would be paying two and one half times as much as non-urban workers.

Again, in demonstrating the broad discretion the judiciary gives to a legislative body when there is clear and convincing rationale behind the enactment of legislation, this Court held in Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 49 L. Ed. 2d 520, 96 S.Ct. 2562 (1976), that a state statute which retired state police officers at age 50, was not violative of Equal Protection Clause of the Fourteenth Amendment. In this case, the Court said,

> "But where rationality is the test, a state does not violate the Equal Protection Clause merely because the classification made by its laws are imperfect."

While divided, 5-4, this Court upheld a very controversial Texas School Financing plan as not violative of the Fourteenth Amendment or Equal Protection Clause in the case of San Antonio Independent School District v. Rodriquez, 411 U.S. 1, 36 L. Ed. 2d 16, 93 S. Ct. 1278 (1973).

The sum and substance of the above cited cases, as well as many others, is a clear recognition of the Court's belief in granting broad discretion to state legislatures in the formulating of sound tax policies. In the instant case, the soundness of the policy of the Kentucky General Assembly in enacting Ky. Rev. Stat. 68.197 which provided for a tax credit to workers paying a like tax to a city within a county imposing an occupational tax on all workers and businesses in the county is evident. This is neither hostile nor oppressive because the legislative intent and policy was apparent; that its only purpose was to equalize the tax burden on workers and firms within a particular county, a permissible classification which this Court has long recognized as not violative of the Equal Protection Clause.

Predicated upon the cases cited which recognize and affirmatively state the position of this Court to tax policies of the state legislatures, where there is no arbitrary or hostile discrimination against the workers within a county subject to an occupational tax which would be in conflict with the Fourteenth Amendment, these Appellees-Movants pray the Court to dismiss the appeal of the Appellants herein, and that these movants be awarded their costs herein expended.

Respectfully submitted,

FRED H. GRIMES
Attorney for Appellees

CERTIFICATE OF SERVICE

Pursuant to Rule 28.3, 28.4(c) and Rule 28.5(6), of the United States Supreme Court Rules, I, Fred H. Grimes, a member of the United States Supreme Court Bar, hereby certify that the foregoing Motion to Dismiss, with memorandum of authorities, has been served upon all parties to this action in the following manner:

(a) Upon the appellants, Jim Shoulders, Harold Hammons, Beverly Jackson, Troy Bean, Jerome Cassell, Steve Courtney, Wayne Travis and Bud Waltmon, by depositing three (3) copies in a United States post office, with first-class postage prepaid, addressed to their counsel of record, Stanley K. Spees, 325 North 4th Street, P.O. Box 2806, Paducah, Kentucky 42002, Attorney for Appellants; and

(b) Upon the Commonwealth of Kentucky by depositing three (3) copies in a United States post office, with first-class postage prepaid, addressed to Attorney General of Kentucky, Hon. Fredric J. Cowan, Jr., 120 State Capitol, Frankfort, Kentucky 40601; on this the

21st day of October, 1988.

Fred H. Grimes

FRED H. GRIMES
Attorney for Appellees

EXHIBIT I K.R.S. 68.197. License fees on franchises, businesses, occupations or professions in counties of 30,000 or more—Credit of city license fee against county license fee.—(1) The fiscal court of each county having a population of thirty thousand (30,000) or more, may by order or resolution impose license fees on franchises, provide for licensing any business, trade, occupation or profession, and the using, holding or exhibiting of any animal, article or other thing. License fees on such business, trade, occupation, or profession for revenue purposes, except those of the common schools, may be imposed at a percentage rate not to exceed one percent (1%) of:

(a) Salaries, wages, commissions and other compensation earned by persons within the county for work done and services performed or rendered in the county;

(b) The net profits of self-employed individuals, partnerships, professional associations, or joint ventures resulting from trades, professions, occupations, businesses or activities conducted in the county; and

(c) The net profits of corporations resulting from trades, professions, occupations, businesses or activities conducted in the county.

In order to reduce administrative costs and minimize paperwork for employers, employees and businesses, the fiscal court may provide:

(a) For an annual fixed amount license fee which a person may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on salaries, wages, commissions and other compensation earned within the county for work done and services performed or rendered in the county; and

(b) For an annual fixed amount license fee which an individual, partnership, professional association, joint venture or corporation may elect to pay in lieu of reporting and paying the percentage rate as provided in this subsection on net profits of businesses, trades, professions or occupations from activities conducted in the county.

Licenses imposed for regulatory purposes are not subject to such limitations as to form and amount. No public service company that pays an ad valorem tax is required to pay a license tax, and no license tax shall be imposed upon or collected from any insurance company, bank, trust company, combined bank and trust company, combined trust, banking and title business in this state, or any savings and loan association whether state or federally chartered, or in other cases where the county is prohibited by law from imposing a license tax.

(2) No such license fee shall be imposed or collected on income received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training.

(3) Persons who pay a county license fee pursuant to this section and who also pay a license fee to a city contained in the county may upon agreement between the county and the city, credit their city license fee against their county license fee.

(4) The provisions of subsection (3) of this section notwithstanding, effective with license fees imposed under the provisions of subsection (1) of this section on or after July 15, 1986, persons who pay a county license fee and a license fee to a city contained in the county shall be allowed to credit their city license fee against their county license fee. (Enact. Acts 1966, ch. 263, § § 1,2; 1968, ch. 152, § 40; 1974, ch. 113, § 1; 1976, ch. 301, § 3; 1978, ch. 268, § 1, effective June 17, 1978; 1986, ch. 131, § 1, effective July 15, 1986.)

EXHIBIT II McCRACKEN COUNTY ORDINANCE NO. 86

AN ORDER RELATING TO LICENSE FEES UPON ALL PERSONS WHO ARE ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF McCRACKEN, FOR THE HEALTH, EDUCATION, SAFETY, WELFARE AND CONVENIENCE OF THE INHABITANTS OF McCRACKEN COUNTY,

BE IT ORDERED AS FOLLOWS:

SECTION I.

DEFINITIONS: WORDS AND PHRASES USED IN THIS ORDER SHALL HAVE THE ORDINARY AND ACCEPTED MEANING ASCRIBED TO THEM AND THE SPECIAL MEANINGS ASCRIBED TO THEM BELOW:

(a) The phrase "license fee" shall mean a tax for the privilege of exercising the right to engage in trade, occupation or profession for compensation paid by others or the right to engage in trade, occupation or profession, for oneself, for profit or gain, within McCracken County, Kentucky.

(b) The word "person" shall mean and include all natural persons, partnerships, firms, associations, governmental bodies and agencies, and corporations, and whenever used in any interpretation.

(c) "Administrator" means an official administrator of the occupational tax, to be appointed by the McCracken County Fiscal Court.

SECTION II.

EFFECTIVE DATES AND DURATION:

This order shall apply and be effective from and after January 1, 1987, and shall remain in full force and effect until repealed or modified in a lawful manner.

SECTION III.

LICENSE FEES REQUIRED:

(a) All persons engaged in any trade, occupation or profession, within McCracken County, when employed by another, shall pay a license fee measured by and equal to one percent (1%) of gross receipts paid for such service.

(b) All persons engaged in any trade, occupation, or profession, within McCracken County, for themselves, for profit or gain, shall pay a license fee measured by and equal to one percent (1%) of the net profit realized from such activity. "Net Profit" as used herein shall mean gross receipts less ordinary business deductions, recognized as such, and allowed by the laws of the Commonwealth of Kentucky, in computing income tax liability, but without deductions for taxes based on income. It shall be unlawful for any person to engage in any trade, occupation or profession within McCracken County without withholding, reporting and paying the license fees herein provided and required. Portions of this order prescribing a penalty in the form of fine or imprisonment, shall mean and include the individual members of a firm, partnership or association and the officers of any governmental body or agency, or any corporation.

(c) The words and phrases "trade, occupation or profession" shall include any and all activities and the rendering of any and all services of all kinds or other remuneration, or net profit or gain of any kind when applied to persons so engaged for themselves

whether the person be a resident of McCracken County or not.

(d) The word "County" means McCracken County, Kentucky, and includes the cities of Paducah and Lone Oak.

(e) All persons engaged in any trade, occupation or profession, when employed by another, and all persons engaged in any trade, occupation or profession, for themselves, within the territorial boundaries of the City of Paducah, and paying a license fee to the City of Paducah for the privilege of working or engaging in a business or profession within the City of Paducah, shall be entitled to credit for such fees paid to the City of Paducah against the fees imposed by McCracken County, Kentucky.

(f) The phrase "gross receipts" and the word "compensation" when applied to a person employed by others shall have the same meaning and shall include the gross amount of all salaries, wages, commissions, bonuses or other money payments of any kind, or other considerations having a monetary value, which a person receives or becomes entitled to, or is given credit for by an employer, without deduction for withholding taxes, social security benefits, any form of insurance or retirement benefits, or other deductions made by an employer in calculating "take home-pay" provided however that any traveling expenses actually incurred and paid by the employer, gratuities such as "tips" paid by someone other than the employer, and wages, salaries or other compensation received by domestic servants employed in a private home, shall be exempt from the operation of this order.

(g) The singular shall include the plural, the plural

shall include the singular, the masculine or feminine shall include both and the neuter genders whenever susceptible to such.

SECTION IV.

REGULATION, ADMINISTRATION, ENFORCEMENT AND COLLECTION OF LICENSE FEES AND THE PURPOSE THEREOF:

It shall be the duty of the Administrator to collect all license fees and deposit the same in the General Fund of McCracken County, to be used to defray the general expenses of the County Government. The Administrator shall have the power, and it shall be his duty to make and publish such rules and regulations as may be necessary to administer this order and to provide such printed forms as may be required for reporting, paying and receipting all such license fees and for all other requirements in the proper and efficient administration of this order.

SECTION V.

DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSE FEES OF EMPLOYEES:

(a) It shall be the duty of every person engaged in any trade, occupation or profession, within McCracken County who employes or engages the services of others in connection therewith, to withhold from the compensation of such employee, the license fees herein provided, at the time such compensation is paid or credited; said employer shall report and pay the same to the Administrator on or before April 30, July 31, October 31 and January 31, of each year, for the license fees accrued during the preceding three months beginning July 1, 1987, except as

provided in (b) and (c). Failure on the part of the employer to withhold, report and pay the license fees shall not relieve the employees from liability therefor.

(b) A person engaged in agriculture business (raising crops and livestock) who employ less than five (5) employees on a regular time basis, (four-hundred fifty (450) hours during a quarter), may file a return and pay the withholding tax at the end of the taxable year.

(c) Any person may elect to estimate and pay in advance, the withholding tax that may become due from compensation to be paid employees for a taxable year.

This procedure will exempt the person from filing quarterly returns. The penalty for underpayment will be as provided in sub-section (d) below.

(d) All license fees not paid when due shall draw interest at the rate of twelve percent (12%) per annum from due date until paid, and upon failure to pay any license fee when due, a penalty of ten percent (10%) is hereby imposed which penalty shall draw interest from due date.

SECTION VI.

DUTY OF PERSON ENGAGED IN TRADE, OCCUPATION OR PROFESSION FOR ONESELF TO REPORT AND PAY LICENSE FEES:

It shall be the duty of every person engaged in any trade, occupation or profession for themselves, for gain or profit, within the County, to file with the Administrator a return showing the net profit or gain from such activity realized during the preceding year as determined by the Licensee's method of accounting or keeping books, and shall pay the license herein

provided, calculated on the net profit for such preceding fiscal year. Within 105 days after the end of the Licensee's fiscal year following January 1, 1987, such person shall file a report with the Administrator showing the net profit or gain for the preceding license period.

The first license period shall extend from January 1, 1987, until the end of the Licensee's fiscal year, and the license fee for that period shall be calculated on a pro-rated basis as of the end of the Licensee's fiscal year. The Licensee shall be permitted to adopt any fiscal period which corresponds with his system of accounting or bookkeeping, or the period adopted for income tax purposes.

SECTION VII.

DUTY OF EMPLOYEE WHEN EMPLOYER FAILS TO WITHHOLD, REPORT OR PAY:

In the event an employer fails to withhold, report or pay license fees for which any employee is liable, then it shall be the duty of the employee to report and pay the same when due and to file reports showing total gross receipts for the period from January 1, 1986, to December 31, 1986, and thereafter annually. Said reports shall be made upon forms furnished by the Administrator and shall be filed not later than April 15th of each year. In the event the Licensee has not paid the full amount of license fees due for any period, the deficit, together with interest and penalties, must be paid when the reports above provided for are filed or the amount legally determined by the Administrator. In the event of overpayment, McCracken County shall make prompt refund.

SECTION VIII.

APPORTIONMENT OF LICENSE FEES WHERE COMPENSATION OR NET PROFIT IS DERIVED FROM ACTIVITY BOTH WITHIN AND WITHOUT THE COUNTY:

Whenever any employee receives compensation for services or activity performed both within and without the County, the license fee required under this order shall be computed and paid upon the basis of the proportion of compensation earned for services performed within the County.

Whenever the net profit or gain from any trade, occupation or profession is derived from activity or business done within and without the County, the license fee required under this order shall be computed and paid upon the proportion of net profit or gain derived from activity within the County.

In all cases of license fees computed upon the basis of apportionment of compensation or net profit or gain, as herein provided, the apportionment may be shown by the sworn statements of the licensee or employer, but shall not be binding upon the County. Said apportionment shall be subject to verification and determination by the Administrator or his agents or employees through examination and audit of the books and records of the licensee or employer, or both, as required by the Administrator.

SECTION IX.

RECORDS REQUIRED:

The reports required by this order shall be in form prescribed by the Administrator and shall contain all essential information, date and figures, upon which the license fees required by this order are computed. Every person required to pay any license fee provided by this order shall be required to make all books, records and accounts upon which information required by this order is based, available to the Administrator, his agents or employees, for the purpose of examination, audit or verification; provided however, that if any licensee or employer, subject to the provisions of this order, shall voluntarily submit copies of income tax returns for examination, then in such case no further examination or audit will be required until and unless

there is re-examination or audit made by the taxing authority to whom the return was made; and provided further, the Administrator may dispense with examination of the books, records, accounts, or tax returns of the licensee in any case where the Administrator is furnished with a certificate of any attorney at law, a licensed public accountant, or the sworn statement of any other accountant or bookkeeper of the licensee stating that the amount of tax reported conforms to the income tax return filed by the licensee for the applicable period.

Nothing herein shall prevent or preclude the Administrator from conducting an examination and audit of the books, records, and accounts, as herein provided at any time he may have reasonable grounds to believe that the Licensee has not correctly reported and paid the license fees due under the provisions of this order.

All information obtained by the Administrator or any of his agents or employees, or any other official or employee of McCracken County, from any reports, examination or audit of books, records, accounts, income tax returns, or any other source, in the administration of this order, shall be treated and considered as confidential and privileged except for official purposes, unless otherwise treated by judicial decree or specific provision of law, and shall not be open to inspection by the public.

Any official, agent or employee of McCracken County who divulges any information obtained under the provision of this order, except for the purposes of administering this order as herein provided, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than $100.00, not more than $500.00, or punished by confinement for not more than thirty (30) days, or both.

It is further provided that the Administrator or any County Official or employee shall have the right to disclose to the Commissioner of Revenue of the State of Kentucky, or his

duly authorized agent or employee, any of the information protected by Section VIII of this order, provided reciprocal right to information concerning any person liable for license fees under the provision of this order is made available to the County by such State Authorities; and provided further, that the County may publish statistics based upon information obtained in the administration of this order so long as such published statistics do not reveal the identity of any Licensee.

SECTION X.

PENALTIES FOR VIOLATIONS:

Any person who violates any of the provisions of this order, by failing to pay any license fee when due, or failing to withhold and pay any license fee when due, or failing to file any report or submit to any examination required by this order, or in any other manner fails or refuses to comply with any of the terms or provisions of this order, shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100.00, nor more than $500.00, or imprisoned for not more than thirty (30) days, or both. Such penalties shall be in addition to other penalties imposed by this order. Each failure or refusal to comply with any of the provisions of this order shall constitute a separate offense, and each day that such failure or refusal continues without compliance shall constitute a separate offense.

SECTION XI.

SEVERABILITY:

Each section and each provision of each section of this order are severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person, licensee, class or group, be held unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this order, it being the legislative intent to

ordain and enact each provision, section, paragraph, sentence and part thereof, separately and independently of every other.

SECTION XII.

REPEALING CLAUSE:

All orders or parts thereof in conflict with the provisions of this order are hereby repealed.

SECTION XIII.

EFFECTIVE DATE:

This order shall become effective on October 23, 1986.

SECTION XIV.

This order shall be published in full in the Paducah Sun.

1ST READING October 17, 1986.

2ND READING October 23, 1986.

PASSED BY THE FISCAL COURT OF McCRACKEN COUNTY ON THE 23RD DAY OF OCTOBER, 1986.

/s/ John R. Harris
Judge/Executive
McCracken County, Kentucky

AMENDMENT TO McCRACKEN COUNTY ORDINANCE RELATING TO LICENSE FEES UPON ALL PERSONS WHO ARE ENGAGED OR EMPLOYED IN ANY TRADE, OCCUPATION OR PROFESSION WITHIN THE COUNTY OF McCRACKEN, FOR THE HEALTH, EDUCATION, SAFETY, WELFARE, AND CONVENIENCE OF THE INHABITANTS OF McCRACKEN COUNTY.

Be it Ordained by the Fiscal Court of the County of McCracken, Commonwealth of Kentucky:

That Section V (a) of the above-mentioned ordinance be amended to read as follows:

DUTY OF EMPLOYER TO WITHHOLD, REPORT AND PAY LICENSE FEES OF EMPLOYEES:

(a) It shall be the duty of every person engaged in any trade, occupation or profession, within McCracken County who employs or engages the services of others in connection therewith, to withhold from the compensation of such employee, the license fees herein provided, at the time such compensation is paid or credited; said employer shall report and pay the same to the Administrator on or before April 30, July 31, October 31, and January 31, of each year, for the license fees accrued during the preceding three months; and which quarterly withholding periods shall commence on January 1, 1987, except as provided in (b) and (c). Failure on the part of the employer to withhold, report and pay the license fees shall not relieve the employees from liability therefor.

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The foregoing amendment shall be published in the Paducah Sun on Dec. 2, 1986.

1ST READING December 11th, 1986.

2ND READING December 22, 1986.

PASSED BY THE FISCAL COURT OF McCRACKEN COUNTY ON THE 22ND DAY OF DECEMBER, 1986, ON MOTION OF COMMISSIONER LINDSEY, SECONDED BY COMMISSIONER ORAZINE.

/s/ John R. Harris
McCRACKEN COUNTY JUDGE-EXECUTIVE